

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 117/2001

New Delhi this the 28th day of September, 2001

Hon'ble Mr. Justice B. Dikshit, Vice-Chairman (J)
Hon'ble Mr. V.K. Majotra, Member (A)

Const. Parmod Kumar
(PIS No. 28823440)
Presently Posted at:-
DAP Ist Bn., Delhi Police

-Applicant

(By Advocate: Shri Anil Singhal)

Versus

1. Govt. of NCT of Delhi
through Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.
2. Joint Commissioner of Police,
Northern Range, Delhi-3
through Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.
3. Additional D.C.P.,
North Distt., Civil Lines,
Delhi.

-Respondents

(By Advocate: Shri George Paracken)

ORDER (Oral)

By Mr. V.K. Majotra, Member (A)

The applicant has assailed punishment of reduction of pay by 5 stages for a period of 5 years entailing reduction in his pay from Rs.3350/- to Rs.3050/-PM and that the applicant will not earn increment of pay during the period of reduction and the reduction will have effect of postponing future increment of pay.

2. The facts, in brief, in the case are that Constable Pramod Kumar along with HC Ram Chander and Constable Arun Kumar on 4.6.92 while posted at P.S.

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Timarpur, stopped a motor cycle and two Motorcyclists were robbed of Rs. 40,000/- (Forty Thousand) on the pretext that they were in the possession of smack. FIR 191 dated 5.6.92 under Section-392/34 IPC was registered against them. The applicant has stated that whereas a preliminary enquiry had been conducted in the matter, prior approval of the Additional Commissioner of Police was not obtained for initiating the departmental enquiry under Rule-15(2) of Delhi Police (P&A) Rules, 1980. The Enquiry Officer held the charge levelled against the applicant proved. The applicant made a representation on 13.5.98 in response to the show cause notice. However, the Disciplinary Authority imposed the aforestated penalty. The Appellate Authority vide order dated 14.6.99 (Annexure A-5) rejected the appeal. Later on, the applicant was acquitted in the criminal case vide order dated 19.8.99 (Annexure A-11). The applicant had made a revision against the punishment orders which was rejected vide order dated 19.6.2001.

3. The applicant has stated that he was not supplied copies of the statements of various witnesses recorded during the course of the preliminary enquiry and that the case of the prosecution is based on no evidence. The applicant has sought quashing and setting aside the impugned orders and directions to the respondents to restore the applicant in his original pay and withheld increments and treat the period of suspension as spent on duty for all intents.

4. In their counter, the respondents have stated

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that no preliminary enquiry was ordered in this case. Therefore, the question of supplying copy of the P.E. report and the statement of the preliminary enquiry does not arise. It is further stated that the Disciplinary Authority after taking into account the representations of the applicant and hearing him in O.R. on 15.5.98 observed that the applicant deserved a deterrent punishment but as the material witnesses turned hostile, he took a lenient view and awarded a lesser punishment.

5. We have heard the learned counsel of both sides and considered the material on record.

6. Learned counsel of the applicant contended that the respondents had held preliminary enquiry and as there was an allegation of a cognizable offence of robbery against the applicant, it was obligatory in terms of Rule 15(2) of Delhi Police (P&A) Rules, 1980 to obtain orders of the Addl. Commissioner of Police for holding a departmental enquiry. In this connection, the learned counsel of the respondents stated that no preliminary enquiry had been held. The learned counsel of the respondents also produced before us, on our directions, the original record relating to the departmental enquiry against the applicant. We find that complete record of the enquiry has not been produced before us. Learned counsel stated that despite best efforts of the respondents, they have not been able to locate the complete record relating to the enquiry. In the absence of the complete record, we are not in a position to find

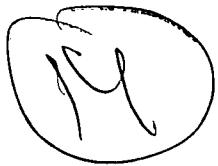
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whether preliminary enquiry in the matter had been ordered or not.

7. The learned counsel of the applicant next raised the issue that the Disciplinary Authority had relied on statements made by the complainants during fact finding enquiry from which they had resiled during the course of the departmental enquiry. Referring to the statement made by PW-3 Shri Sat Pal Mongia ACP, he pointed out that three reports dated 6.6.92, 8.7.92 and 9.7.92 have been exhibited as PW 3/a, PW3/b & PW3/c which were submitted during the course of the enquiry and have been relied upon for punishing the applicant. However, the same have not been supplied to the applicant. We have read the records produced before us by the respondents and find that these three reports exhibited in the statement of PW-3 are missing from the record of the enquiry. Learned counsel of the respondents stated that no prejudice has been caused to the applicant. This argument of the learned counsel is unacceptable. Whereas the three reports are not available in the record, they have been relied upon by the Enquiry Officer as well as the Disciplinary Authority when the Disciplinary Authority concluded that complainants in the departmental enquiry have resiled due to fear of reprisal from their earlier statements recorded by the investigation officer. Whereas the applicant in his appeal (Annexure A-9) had pointed out that he had not been supplied copies of the statements, no record has been produced before us to establish that these reports were supplied to applicant.

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Obviously, inference from non-availability of complete record of the enquiry before us has to be that whereas on the basis of the statements exhibited in the evidence of PW-3, guilt was held proved against the applicant and copies thereof were not supplied to the applicant it has caused serious prejudice to the defence of the applicant.

8. Having regard to the reasons recorded and discussion made above, The OA is allowed. We quash and set aside the impugned order dated 13.7.92 (Annexure A-1), findings dated 31.3.98 (Annexure A-3), order 30.6.98, passed by the Disciplinary Authority (Annexure A-4), the Appellate Authority's order dated 14.6.99 (Annexure A-5) and direct the respondents to restore applicant's original pay and release forthwith the withheld increments with all consequential benefits.

9. Before parting, we are constrained to observe that as the respondents have not been able to produce before us, despite our directions, complete records relating to the departmental enquiry, we had to draw adverse inferences and quash the orders of punishment against the applicant in a serious matter involving alleged robbery by the applicant and his colleagues. The applicant has derived this benefit on account of the laxity or negligence of the concerned official/officials in whose custody the records of the departmental enquiry were kept. Copy of these orders be forwarded to the



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Commissioner of Police, Delhi for appropriate action
against the concerned officials.

10. No costs.

V.K. Majotra

(V.K. Majotra) 28.9.2001
Member (A)

B. Dikshit

(B. Dikshit)
Vice-Chairman (J)

cc.